



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8030965

Date: SEPT. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a software technology company, seeks to classify the Beneficiary, a senior creative designer, as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has a qualifying one-time achievement or, in the alternative, meets at least three of the ten initial evidentiary criteria for this classification.

On appeal, the Petitioner asserts that the Beneficiary meets five of those evidentiary criteria and has sustained national or international acclaim in her field.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary’s achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner demonstrates that a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The record reflects that the Petitioner currently employs the Beneficiary in the position of “Creative Designer II.”¹ The Beneficiary’s curriculum vitae indicates that she has worked as a graphic designer and art director for various employers in Brazil and the United States since 2002. The Beneficiary received her bachelor’s degree in industrial design [REDACTED] in Brazil in 2007 and has completed additional coursework [REDACTED] in New York.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must establish that she satisfies at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner did not establish that the Beneficiary meets any of these criteria. On appeal, the Petitioner asserts that the Beneficiary meets five of the ten criteria, which we will discuss in detail below.² After reviewing all of the evidence in the record, we find that she does not meet the requisite three evidentiary criteria and is not eligible for the requested benefit.

¹ The Petitioner also refers to her role as “Senior Creative Designer,” while the Beneficiary states in her curriculum vitae that she works for the Petitioner as an “Art Director.”

² The Petitioner has not pursued its initial claim that the Beneficiary meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field. Therefore, we consider this criterion to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner claims that the Beneficiary meets this criterion based on her receipt of the [] [] Graphic Design Award in 2007. In order to fulfill this criterion, the Petitioner must demonstrate the Beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

At the time of filing, the Petitioner submitted a certificate from the [] Graphic Design Awards indicating that the Beneficiary "was awarded for First Place in the [] category for her work on the book []" The Petitioner also submitted a summary translation of an announcement of the award winners published by the contest's sponsor [] [], a Brazilian paper company. The announcement describes the award as "the largest cash prize award in the graphic design industry in Brazil," and notes that "the idea behind the competition is to use the innovative [] paper as raw material for product creation."

In a request for evidence (RFE), the Director instructed the Petitioner to provide certified English translations of these documents and additional evidence to establish that the award is nationally or internationally recognized in the field of endeavor. As noted by the Petitioner on appeal, the Director incorrectly stated in his decision that the Petitioner's response to the RFE did not include additional evidence related to the [] Graphic Design Award.

The Petitioner's response included articles published by *Portal da Propaganda* (portaldapropaganda.com.br), *Cosmetica News*, and designbrasil.org.br. The Petitioner did not provide any information regarding these publications and we cannot determine that the awards announcement received national or widespread coverage in the media.

The articles confirm that cash prizes were awarded to first, second and third place finishers in four traditional categories ([] us), that a single "Signature Piece" award winner received an international trip, and that winners in the student category received technology products instead of cash. Although the articles mention the Beneficiary was the winner of the [] category, they do not indicate that she received a cash award or other prize. The article published by designbrasil.org.br identifies [] and [] as "the big winners" of the 2007 [] Award.

Another article from designbrasil.org.br, written about the launching of the [] Graphic Design Awards in 2006, mentions that the awards are open to any design professionals who have developed graphic print pieces on certain trademarked [] papers. This article also mentions

³ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

that although winners are chosen by a jury, the “jury’s assessment is not guided by predetermined criteria.”

Upon review of this evidence, we conclude that the Petitioner has not established that the Beneficiary’s first place certificate is a nationally or internationally award or prize for excellence in her field. The Petitioner emphasizes on appeal that the Beneficiary “received First Place in the [redacted] Category at the [redacted] Graphic Design Award in Brazil in 2007, the largest cash prize award in the graphic design industry in Brazil.” However, the evidence does not support the Petitioner’s claim that she received a cash prize. As noted, the evidence indicates that cash prizes were given in only four categories (Editorial, Packaging, Miscellaneous and Promotional) and identifies different first place winners in each of those categories. In fact, articles about the launching of the 2005 and 2008 editions of the competition indicate that the award categories are limited to these four “traditional categories” with a “student category” that was added in 2007. They do not mention the [redacted] category.

The list of 2007 winners identifies the first, second and third place winners in the “traditional categories,” lists the Beneficiary as the winner in the [redacted] category, and below her, lists second and third place finishers in the “student category.” It is unclear why there is no winner listed in the student category or why the other finishers in the Beneficiary’s category are not listed in the results released by the competition’s corporate sponsor. The evidence reflects that there were over 800 entries for the 2007 awards but does not indicate how many submissions were received in the Beneficiary’s category compared to those categories that awarded cash prizes.

Overall, while the Petitioner provided some evidence of media coverage of the [redacted] Graphic Design Award, it did not provide sufficient evidence that the specific award received by the Beneficiary is a nationally or internationally recognized award for excellence in her field.

The Petitioner’s response to the RFE included evidence that the petitioning company received the [redacted] Exhibit Booth Award” for [redacted] Booth” at the 2019 National [redacted] Association Show 2019. The Petitioner provides photographs of the Beneficiary with the award at the show and indicates that she and her colleague “are the creative brains behind our award-winning booth design.”

In evaluating evidence submitted in support of this criterion, the focus should be on a beneficiary’s receipt of the awards or prizes, as opposed to his or her employer’s receipt of the awards or prizes.⁴ Here, even if we determined that the Beneficiary, rather than the Petitioner, was the recipient of this National [redacted] Association award, we note that it was granted in August 2019, more than one year after the petition was filed. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary meets this criterion.

⁴ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that a beneficiary has made original contributions of major significance in the field.⁵ For example, a petitioner may show that a beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

In its initial supporting letter, the Petitioner stated that the Beneficiary "has contributed significantly to the field of graphic design . . . having played a leading role in high-profile, original, and groundbreaking projects throughout her career." The Petitioner further maintained that the Beneficiary's work "has become widely recognized" and has been emulated by other designers. The Petitioner submitted a letter from her current manager, as well as six letters from peers and former colleagues in the industry. While the authors praise the Beneficiary's talents and achievements and confirm that she has worked for prestigious firms with well-known clients, they did not identify a specific original contribution to the field or explain how her contributions have impacted or influenced the field.

For example, [redacted], a vice president and creative director at [redacted] states that she regards the Beneficiary as "one of the most talented contemporary designers" and describes her as "an exceptional artist whose work merits praise from every corner of the industry." [redacted] describes the Beneficiary's work as "elegant, groundbreaking and profoundly effective," but does not point to a specific contribution that is regarded as original and remarkably impactful in their shared field. Similarly, [redacted] CEO of [redacted] credits the Beneficiary with achieving "true originality without sacrificing the necessary attention to their clients' needs." He notes that her work has appeared in renowned advertising and marketing media but does not specify an original contribution or explain its major significance.

The remaining letters were provided by the Beneficiary's former employers. [redacted] of [redacted] praises the "outstanding job" she did, noting that she showed "unusual competence in several design disciplines." [redacted] of [redacted] simply listed the duties the Beneficiary performed for his agency and noted several well-known companies that were among her clients. [redacted] of [redacted] praised the Beneficiary's work for exhibiting "a splendid approach to creative problem-solving and a unique vision of strategic brand values." Finally, [redacted] of [redacted] described her role with his company, identified some of her clients, praised the "outstanding" results she achieved, and praised her ability "to seamlessly interlace beauty with innovative concepts and to consistently produce stunning work." The submitted letters praise the Beneficiary's abilities, the outstanding quality of her work, and her successes working with well-known brands. However, they do not identify an original contribution that has had a major impact or influence on the field. Letters that specifically articulate how an individual's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.⁶

After receiving an RFE advising that the initial letters lacked specificity and did not identify the significance of the Beneficiary's contributions in the field, the Petitioner submitted two additional letters. The first, a new letter from [REDACTED] stated that the Beneficiary's creative work for the Petitioner "is defining the [REDACTED] industry." As an example, she stated that the petitioning company "is a pioneer in the use of [REDACTED] art direction to showcase [REDACTED] to consumers" and that the style "is now a reference point in the industry" that has been copied by competitors such as [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] further describes the style as the Petitioner's "signature photography," and credits the Beneficiary as "the leading designer at the global creative and brand team that established this significant trend."

While this letter is more specific than those provided at the time of filing, [REDACTED] letter alone does not establish that the creative choice to use a particular photography style in an advertising campaign is an original contribution of major significance in the industry. The Beneficiary's portfolio indicates her involvement as an art director in the photography campaign referenced by [REDACTED]. However, it is significant that none of the letters from the Petitioner mention the Beneficiary's use of [REDACTED] art direction" as an original contribution or mention its significance or influence.

The second new letter provided in response to the RFE is from [REDACTED], an assistant professor of visual communications at University of [REDACTED]. [REDACTED] states that the Beneficiary "is highly remarked as one of the top graphic designers in her field," noting that she has "the knowledge of working at agencies, but also at large corporations as a creative professional." She indicates that the Beneficiary was invited to participate as a panelist at the American Academy of Advertising conference in [REDACTED] 2018, and emphasizes that she "has developed groundbreaking work as an Art Director, Graphic Designer, and Creative Director for top-tier design firms and companies" with her work appearing in leading publications and at high-profile events. [REDACTED] attests to the Beneficiary's professional successes and reputation in the industry but does not explain how she has made an original contribution that has been of major significance in her field.

For the reasons discussed above, the Petitioner has not shown that the Beneficiary made original contributions of major significance in the field.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner claims that the Beneficiary meets this criterion based on the display of her work at the 2017 [REDACTED] Festival, the International [REDACTED] 05 in [REDACTED], the [REDACTED] [REDACTED] exhibition held at the [REDACTED] in [REDACTED] and the 2012 [REDACTED] exhibition held at the [REDACTED] in [REDACTED].

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

The Director determined that the Petitioner did not submit qualifying evidence that meets the plain requirements of the regulation, after noting in the RFE that this criterion is limited to the “visual arts” and that the Beneficiary is “not a visual artist” who has created “tangible pieces of art that were on display at exhibitions or showcases.” We disagree with the Director’s conclusion that the Beneficiary, whose work products include graphic artwork, is not a “visual artist.” Further, the record contains evidence that several of the exhibitions listed above were artistic exhibitions or showcases.

We do, however, find insufficient evidence to establish that the Beneficiary’s work was displayed at the listed exhibitions. With respect to the International [redacted] held in 2005, the record contains a letter from [redacted] addressed to “Dear [redacted]” indicating that “your artwork” was selected to be presented at the First International [redacted]. This letter, which is not dated and is not addressed to a named individual, does not corroborate the Petitioner’s claim that the Beneficiary’s work was displayed at the exhibition.

Regarding the [redacted] exhibition, the record contains an online public announcement of the exhibition published *NY Daily News* and several photographs of the works displayed at the exhibit. However, the announcement does not mention the Beneficiary and the artwork was displayed without any identifying information about the participating artists.

The [redacted] is described as an exhibition that featured 75 graphic design firms in [redacted] and included “original work and portraits submitted by each studio.” The Petitioner stated that the exhibition included “extraordinary graphic design work” created by the Beneficiary but did not provide corroborating evidence in support of this claim. The Petitioner provided a screenshot from the exhibition website confirming that the Beneficiary’s former employer, [redacted] was one of the participating design firms. The screenshot contains background information about the studio and photographs of its 20 employees, including the Beneficiary. However, this evidence does not establish that the exhibition featured a display of the Beneficiary’s artistic work.

Finally, the Petitioner describes the [redacted] Festival as “the most important advertising event in the industry,” and indicates that the Beneficiary “in collaboration with [redacted] was responsible for creating a “designated space, visual materials, interactive videos and overall experience featured and exhibited to over 16k attendees.” In her portfolio, the Beneficiary indicates that she was responsible for the creative direction for [redacted]’s cabana at the [redacted] Festival.” The Beneficiary states in her curriculum vitae that she worked as a designer and art director for [redacted] from 2016 to 2017. While she may have been responsible for creative aspects of her employer’s presence at the [redacted] Festival, the evidence does not establish that this advertising industry event qualifies as an “artistic exhibition or showcase” intended to display artistic work of individual artists.

Accordingly, the Petitioner has not provided sufficient corroborating evidence to establish that the Beneficiary has displayed her work at artistic exhibitions or showcases.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner contends that the Beneficiary has held a critical role within its organization, as well as with her former employers, [redacted] [redacted] [redacted] and [redacted]

[redacted] Regarding a critical role, the evidence must demonstrate that a beneficiary has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.⁷

Although the Petitioner submitted letters from some of the Beneficiary's former employers, those letters were not detailed and did not contain specific information as to how the Beneficiary's role was leading or critical. For example, [redacted] of [redacted] stated that the Beneficiary's "innovative work has been instrumental to our brand's evolution" and [redacted] simply listed her duties and clients, noting that she performed "above and beyond our expectation." Although the letters confirm the Beneficiary's employment, they do not reflect detailed, probative information demonstrating the specific nature and outcomes of her roles with the respective businesses. The record also lacks supporting evidence establishing the distinguished reputation of the companies that previously employed the Beneficiary.

However, we find that the Petitioner has established that the Beneficiary meets this criterion based on her current role as a senior creative designer for the petitioning company. The Petitioner's response to the RFE included two detailed letters explaining the Beneficiary's critical role in creating the re-branding strategy for the company's [redacted] brand [redacted], including a letter from the company's Global Creative Director. These letters included comprehensive descriptions of her duties, specific examples of projects and campaigns she led, and financial information demonstrating the importance of the brand to the company's overall success. The record also contains ample documentation establishing the distinguished reputation of the petitioning company.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner claims that the Beneficiary meets this criterion based on her current annual salary of \$107,949. She earned this salary as a senior creative designer or "Creative Designer II" at the time of filing.⁸

To establish that the Beneficiary has a commanded a "high salary" in relation to others, the Petitioner submitted her recent pay statements and comparative wage data for "Graphic Designers." The initial evidence, obtained from the U.S. Department of Labor (DOL) Federal Labor Certification Data Center (www.flcdatacenter.com), shows a "Level 4 Wage" of \$80,205 for graphic designers in the [redacted] area.

The Petitioner later provided additional pay statements and the Beneficiary's 2018 IRS Form W-2 reflecting \$112,461 in wages. It also submitted an updated Level 4 wage for the occupation of "graphic designer" in [redacted] (\$82,326) and provided wage information from the DOL's Occupational Employment and Statistics (OES) website indicating that the 90th percentile wage for

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁸ The record reflects that the Beneficiary subsequently received a raise to an annual salary of \$135,000. As discussed, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

graphic designers nationwide is \$85,760. Finally, the Petitioner submitted a screenshot from Payscale.com for the position of “Senior Graphic Designer” in [REDACTED] indicating a median salary of \$76,360 and a 90th percentile salary of \$98,000.

The Director observed that the wage information provided for “graphic designers” does not demonstrate that the Beneficiary’s salary is high compared to that of other “senior creative designers.” The Director concluded that the Petitioner did not provide any objective earnings data showing how her salary is high compared to others performing similar work, and therefore found that this criterion was not met. On appeal, the Petitioner maintains that its submission of the Level IV wage for graphic designers and the Payscale.com data for senior graphic designers was sufficient to meet its burden.

At the time of filing, the Petitioner stated that the Beneficiary’s position “falls under the DOL’s standard occupational classification of Graphic Designers (27-1024).” As noted, the Petitioner submitted a copy of the Beneficiary’s curriculum vitae in support of the petition, in which she refers to her role with the Petitioner as an “Art Director” and her portfolio, which describes her role as an “art director” or “creative director” for various campaigns and projects with the Petitioner.

In response to the RFE, the Petitioner provided a detailed description of the Beneficiary’s duties as a senior creative designer. The Petitioner indicated that the Beneficiary spends 30% of her time leading a creative team in [REDACTED] developing communications on a global basis as well as being responsible for creative concepts, design and execution of local and global campaigns that include video and photoshoots, advertising, social media and websites. The Petitioner assigns an additional 20% of her time to “team management” indicating that she “guides a team of creatives” and oversees creative and brand work. Her other stated responsibilities include developing brand strategy for co-marketing campaigns and communications with [REDACTED] chains and providing creative strategy regarding print and digital media designs.

The DOL’s description of the Graphic Designer occupation states that this position will “design or create graphics to meet specific commercial or promotional needs, such as packaging, displays or logos, and “may use a variety of mediums to achieve artistic or decorative effects.” The Beneficiary’s duties, as stated in the record, go well beyond creating graphics. In fact, the Petitioner’s claim that she serves in a critical role for the company is based on her wide-ranging leadership responsibilities for many creative aspects of one of its most important brands.

Therefore, we conclude that the salary data provided for graphic designers did not allow for a comparison of the Beneficiary’s salary as a senior creative designer “in relation to others in the field.” *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). While her field may include “graphic design,” the record does not establish that she is currently performing the duties of the “graphic designer” position described in the submitted wage surveys.

For the reasons discussed, the Petitioner did not establish that the Beneficiary receives a high salary in relation to others in her field.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on her behalf, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard, statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of the Beneficiary’s work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.